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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1975

No. 75-1297

THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

INEZ GARCIA,
Respondent.

PETITIONER'S REPLY BRIEF

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ARGUMENT

I

THE STATE COURT DECISION WAS NOT BASED ON AN INDEPENDENT AND ADEQUATE STATE GROUND

In opposing petitioner's Petition for Certiorari, respondent Garcia concedes that the California Court of Appeal held that the instruction in issue violated the due process clause of the Fourteenth Amendment, but submits that violation of California Penal Code section 1096 provided a state ground for the decision which was independent of the due process ground

(Respondent's Brief in Opposition, hereinafter "RB," pp. 9-13).

Petitioner agrees that this Court will decline to review state court judgments which rest on independent *and* adequate state grounds, even where those judgments also decide federal questions. *Henry v. Mississippi,* 379 U.S. 443, 446 (1965). It is also well established that in deciding this issue, this Court is not bound by the state court and has the duty to look beyond broad language and determine the precise ground on which the judgment rests. *Staub v. City of Baxley,* 355 U.S. 313, 318 (1957); *Black v. Cutter Laboratories,* 351 U.S. 292, 298 (1956).

In the instant case, while the Court of Appeal noted several cases in which reasonable doubt instructions were held erroneous (Appendix A to Petition, hereinafter "Appendix," pp. ii-vii; 54 Cal.App.3d 61, 63-67, 126 Cal.Rptr. 275, 276-280) the holding of the Court was that the questioned instruction was "strikingly comparable to the civil case rule of preponderance of evidence" and diluted the fundamental principle of guilt beyond a reasonable doubt in violation of *In re Winship,* 397 U.S. 358, 364 (1970). Appendix, pp. x-xii; 54 Cal.App.3d at 68-69, 126 Cal.Rptr. at 279-280.

The fact that the court cited *Chapman v. California,* 386 U.S. 18, 24 (1967) for the proposition that a reasonable doubt standard must be applied because the asserted error was of "constitutional dimension" (Appendix, p. xi; 54 Cal.App.3d at 70, 126 Cal.Rptr. at 280) clearly indicates that the court was basing

its decision on federal constitutional grounds. In California, the test for state constitutional error is set forth in *People v. Watson,* 46 Cal.2d 818, 835-836, 299 P.2d 243, 254-255 (1956). As stated in *Watson:* "[A] 'miscarriage of justice' should be declared only when the court, 'after an examination of the entire cause, including the evidence,' is of the 'opinion' that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error." By employing the stricter *Chapman* test, the Court of Appeal recognized that a federal issue was involved. Had the Court of Appeal wished to base its opinion on an adequate and independent state ground, it would have so stated. *See,* e.g., *People v. Krivda,* 8 Cal.3d 623, 624, 105 Cal.Rptr. 521, 504 P.2d 52 (1973).[1]

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[1]At one point, the Court of Appeal, in referring to the federal protection against conviction except upon proof beyond a reasonable doubt, states:

> "The principle at issue, being essential to a fair trial and grounded in the state and federal constitutional guaranties of due process, must be accorded at least equal dignity with other constitutional rights due the criminally accused; indeed, many believe it entitled to an even higher level of respect than such constitutional precepts, unrelated to the integrity of the guilt finding process, as are declared in *Mapp v. Ohio,* 367 U.S. 643 [6 L.Ed.2d 1081, 81 S.Ct. 1684, 84 A.L.R.2d 933], and *Miranda v. Arizona,* 384 U.S. 436 [16 L.Ed.2d 694, 86 S.Ct. 1602, 10 A.L.R.3d 974]. Unlike the holdings of those cases, it is calculated to safeguard the accused 'from dubious and unjust convictions' (see *In re Winship, supra,* 397 U.S. 358, 362 [25 L.Ed.2d 368, 374]), and to lessen the 'risk of convicting an innocent person.' (Cf. *In re Sterling,* 63 Cal.2d 486, 487 [47 Cal.Rptr. 205, 407 P.2d 5].)" Appendix, p. ix; 54 Cal.App.3d at 67-68, 126 Cal.Rptr. at 278-279.

While the Court of Appeals mentions "state" and federal constitutional guarantees, petitioner submits that, in light of the Court of Appeal's ultimate holding, and the fact that all of the cases cited in the quoted paragraph are federal decisions, this one reference to "state" does not create an adequate and independent

II

THE HARMLESS ERROR RULE APPLIED BY THE STATE COURT MAY BE REVIEWED BY THIS COURT

In Argument II, respondent contends that the harmless error rule applied by the Court of Appeal is a state question, apparently based on the premise that there is an independent and adequate state ground, and that a state court may apply a more stringent rule than the one announced in *Chapman, supra.* (RB 13-16)

Petitioner agrees that a state may apply a stricter standard to a state error, but respondent's argument begs the question before this Court. It is petitioner's position that the Court of Appeal misinterpreted *federal* authority and improperly reversed respondent's conviction. Further, assuming the Court of Appeal properly held that there was an error in violation of a *federally* protected right, the Court's conclusion that reversal was required pursuant to *Chapman v. California, supra,* was incorrect. Respondent's second argument does not refute petitioner's position, but merely states the obvious: that if this Court disagrees with petitioner and finds that the Court of Appeal based its decision on an independent and adequate state ground, there is no need to review the question of harmlessness. However, in light of Argument I, this Court does have jurisdiction to review the finding of error and, *a fortiori,* the finding of *reversible* error beyond a reasonable doubt.

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state ground. In any event, where the nonfederal ground is so interwoven with the federal ground as not to be an independent matter, this Court's jurisdiction attaches. *Enterprise Irrig. Co. v. Farmers' Mut. Canal Co.,* 243 U.S. 157, 164 (1917).

CONCLUSION

For the reasons set forth above, in addition to those appearing in the Petition, petitioner respectfully requests this Court to issue a writ of certiorari to the Court of Appeal of the State of California, First Appellate District, Division One, to review and reverse the decision in this case.

Dated, May 12, 1976.

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